

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: AIRPORT

AGENDA DATE: July 31, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E./780-4724

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

This is a Resolution to authorize the City Manager to sign a Lessor's Acknowledgement of Assignment by and between the City of El Paso and Butterfield Trail Trust I for the following described property:

A Lot 2, Block, 2, Butterfield Trail Industrial Park, Unit One, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Butterfield Trail Blvd., El Paso, Texas.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On December 1, 1981, the City of El Paso entered into a lease for a term of forty (40) years with one (1) additional term of ten (10) years. The present annual rent is \$43,213.00 with 9 years, 5 months plus the 10 year Option remaining on the term. The property is located in Butterfield Trail Industrial Park and contains approximately 5.60806 acres of land. On May 30, 2007, Kasco Industrial Capital, Inc., the successor in interest to Kasco Ventures, Butterfield 2, granted a Deed of Trust, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing to Allstate Life Insurance Company. Subsequently, Kasco Industrial Capital, Inc. defaulted under the terms of a Note that had been assigned from Allstate Life Insurance Company to Road Bay Investments, LLC and further assigned to Butterfield Trail Trust 1, a Delaware statutory trust. On September 6, 2011, Butterfield Trail Trust 1 was the highest bidder at Foreclosure Sale. In accordance with the Lease, Butterfield Trail Trust 1 has succeeded to all Kasco Industrial Capital, Inc.'s rights, interests, duties and obligations under the Lease with an effective date of September 6, 2011. This agenda item will allow the City, as Lessor, to acknowledge the assignment of the Lease to Butterfield Trail Trust 1 as pursuant to the Trustee's Assignment.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? Nov. 1, 1981, 6/21/83, 5/6/97, 6/21/11

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

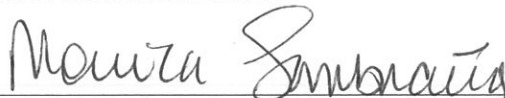
N/A

BOARD / COMMISSION ACTION: N/A

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Acknowledgment of Assignment by and between the City of El Paso and Butterfield Trail Trust I for the following described property:

A portion of Lots 5 and 6, Block 2, Butterfield Trail Industrial Park Unit One, Replat "A", City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Butterfield Trail Blvd., El Paso, Texas.

ADOPTED this the ____ day of _____ 2012.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**LESSOR'S ACKNOWLEDGMENT
OF ASSIGNMENT**

WHEREAS, the City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease ("Original Lease") dated November 10, 1981, with an effective date of December 1, 1981, by and between Lessor and Butterfield Plaza Joint Venture I, covering the following described leased premises:

Approximately 5.60806 acres, more or less, being a portion of Lot 2, Block 2, Butterfield Trail Industrial Park Unit One, an addition to the City of El Paso, El Paso County, Texas

WHEREAS, on April 11, 1986, Lessor and Kasco Vetures, Inc., as the successor in interest to Butterfield Plaza Joint Venture I, entered into a First Amendment to Lease Agreement ("First Amendment to the Lease");

WHEREAS, on May 27, 1997, the City Council authorized the Director of Aviation to revise the legal description and lease date in the Estoppel Certificate and Landlord's Approval of Assignment for the Lease because the property was replatted and is now known as a portion of Lots 5 and 6, Block 2, Butterfield Trail Industrial Park Unit One, Replat "A" City of El Paso, El Paso County, Texas, municipally known and numbered as 9 Butterfield Trail Blvd., El Paso, Texas, and further described in Exhibit "A" attached hereto and made a part hereof ("Property");

WHEREAS, on May 30, 2007, Kasco Industrial Capital, Inc., as the successor in interest to Butterfield Plaza Joint Venture I, granted a Deed of Trust, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing (the "Deed of Trust") to Allstate Life Insurance Company and encumbered the Lease (as hereinafter defined);

WHEREAS, on July 21, 2011, Lessor and Kasco Industrial Capital, Inc. entered into a Second Amendment to the Butterfield Trail Industrial Park Lease ("Second Amendment to the Lease"), and the Original Lease, the First Amendment to the Lease, and the Second Amendment to the Lease shall hereinafter be collectively referred to herein as the "Lease";

WHEREAS, Kasco Industrial Capital, Inc. defaulted under the terms of the Note (as defined in the Trustee's Assignment) and Deed of Trust which had been assigned by Allstate Life Insurance Company to Road Bay Investments, LLC, a Delaware limited liability company, and further assigned to Butterfield Trail Trust I, a Delaware statutory trust;

WHEREAS, on Sept. 6, 2011, Butterfield Trail Trust I, a Delaware statutory trust, was the highest bidder at Foreclosure Sale (as defined in the Trustee's Assignment) as evidenced by a Substitute Trustee's Assignment of Ground Lease recorded in the Real Property Records of El Paso County, Texas, as Instrument No. 20110061946 (the "Trustee's Assignment"), and

WHEREAS, in accordance with the terms of the Lease, Butterfield Trail Trust I has succeeded to all of Kasco Industrial Capital, Inc.'s rights, interests, duties and obligations under the Lease as of the effective date of the assignment of the Lease to Butterfield Trail Trust I pursuant to the Trustee's Assignment.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **ACKNOWLEDGMENT OF ASSIGNMENT.** Lessor hereby acknowledges the assignment of the Lease to Butterfield Trail Trust I ("Assignee") pursuant to the Trustee's Assignment. Assignee hereby acknowledges its obligation to pay any and all sums owing or becoming due to Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee pursuant to the Trustee's Assignment, and Assignee further acknowledges its acceptance of, and agreement to abide by, all the terms, covenants, and conditions of the Lease first arising and accruing from and after the effective date of the assignment of the Lease to Assignee pursuant to the Trustee's Assignment.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly acknowledges that it is bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Kasco Industrial Capital, Inc. is released and discharged by Lessor from all rights, privileges and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the Lease, and Lessor and Assignee each hereby acknowledges that, as of the effective date of the assignment, Assignee enjoys all such rights and privileges and is responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee.
4. **RATIFICATION OF AGREEMENT.** Except as expressly modified herein, no provision of this acknowledgment alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.

Lessor hereby acknowledges that Assignee (or its predecessor in interest) has fully paid all of the amounts set forth in the Rent Payment Plan (as defined in the Second Amendment to Lease).
5. **ADDRESS FOR NOTICE.** Notices to Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNEE: Butterfield Trail Trust I
c/o CBRE Global Investors, LLC
515 South Flower Street, 31st Floor
Los Angeles, California 90071

Attention: A. Gavin Hinze

6. **AUTHORIZED REPRESENTATIVE.** The person signing this Lessor's Acknowledgment of Assignment on behalf of the Assignee represents and warrants that he has the authority legally to bind the Assignee to the provisions of this Lessor's Acknowledgment of Assignment.
7. **NON-WAIVER.** The Lessor's Acknowledgment of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments that require Lessor's consent pursuant to the terms and conditions of the Lease.
8. **EFFECTIVE DATE.** The parties have executed this Lessor's Acknowledgement of Assignment hereto this ____ day of _____ 2012.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2012, by
Joyce A. Wilson as City Manager of the City of El Paso, Texas. (Lessor)

My Commission Expires:

Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

**ASSIGNEE: BUTTERFIELD TRAIL
TRUST I**

By: CBRE Global Investors, LLC
a Delaware limited liability company
as agent for Assignee

By: *Michael J. Every*
Printed Name: **Michael J. Every**
Title: **Authorized Signatory**

ASSIGNEE'S ACKNOWLEDGMENT

THE STATE OF CALIFORNIA)

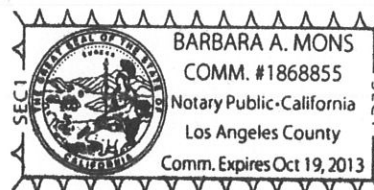
COUNTY OF Los Angeles)

On 03 July 2012, before me, *Barbara A. Mons*, a Notary Public, personally appeared *Michael J. Every*, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Barbara A. Mons* (Seal)



Property Description: A portion of Lot 2, Block 2, Butterfield Trail Industrial Park Unit One, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Lot 2, Block 2, Butterfield Trail Industrial Park Unit One, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at a point, said point being the centerline intersection of Butterfield Trail Boulevard and Zane Grey Street; Thence, North $00^{\circ} 59' 34''$ West, along the centerline of Zane Grey Street, a distance of 105.00 feet to a point; Thence, South $89^{\circ} 00' 26''$ West, a distance of 45.00 feet to a point lying on the westerly right-of-way line of Zane Grey Street, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, 54.98 feet along the arc of a curve to the right having a radius of 35.00 feet, a central angle of $90^{\circ} 00' 00''$, and a chord which bears South $44^{\circ} 00' 26''$ West, a distance of 49.50 feet to a point for a tangent, said point lying on the northerly right-of-way line of Butterfield Trail Boulevard;

THENCE, South $89^{\circ} 00' 26''$ West, along said right-of-way line, a distance of 695.00 feet to a point for a corner;

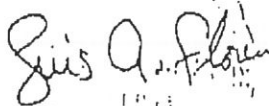
THENCE, North $00^{\circ} 59' 34''$ West, a distance of 335.00 feet to a point for a corner;

THENCE, North $89^{\circ} 00' 26''$ East, a distance of 730.00 feet to a point for a corner, said point lying on the westerly right-of-way line of Zane Grey Street;

THENCE, South $00^{\circ} 59' 34''$ East, along said right-of-way line, a distance of 300.00 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 5.60806 acres (244,287.11 sq. ft.) of land more or less.

SUB-LAND, INC;
Consulting Engineers -- Land Surveyors


Luis A. Flores
Registered Public Surveyor
Texas License No. 1916

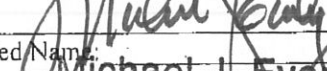
September 17, 1981
Job Number 05-813298

The City of El Paso and Butterfield Trail Trust I acknowledge that this is the correct legal description for the Property, which was replatted and is now known as a portion of Lots 5 and 6, Block 2, Butterfield Trail Industrial Park Unit One, Replat "A," City of El Paso, El Paso County, Texas.

CITY OF EL PASO

By: _____ Date: _____, 2012

ASSIGNEE: BUTTERFIELD TRAIL TRUST I
By: CBRE Global Investors, LLC 1779-2181
a Delaware limited liability company, as agent for Assignee

By: 
Printed Name: Michael J. Everly
Title: Authorized Signatory

Date: 7/3, 2012